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Federal Communications Commission

FCC 98-327

Before the
Federal Communications Commission
Washington, D.C. 20554

In re)	
)	
KEITH PERRY)	
Leander, Texas)	CIB Docket No. 98-46
)	NAL Acct. No. 915HF0002
Order to Show Cause Why a)	
Cease and Desist Order Should Not be Issued)	
)	

**CEASE AND DESIST ORDER AND
FORFEITURE ORDER**

Adopted: December 9, 1998

Released: December 23, 1998

By the Commission:

1. This proceeding began when the Commission released its *Order to Show Cause and Notice of Opportunity for Hearing*, FCC 98-62, April 6, 1998, ("*Show Cause Order*"). Therein, we ordered Keith Perry ("Perry") to show cause why a Cease and Desist Order should not be issued with regard to his unauthorized operation of a radio station on 88.5 and 95.9 MHz in Leander, Texas. In addition, the *Show Cause Order* included a notice of opportunity for hearing pursuant to Section 1.80(g) of the Commission's Rules, 47 C.F.R. § 1.80(g). That aspect of the hearing was to determine whether Perry should be assessed a forfeiture for his apparent willful violation of Section 301 of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 301.

2. By *Order*, FCC 98M-60, released May 26, 1998, Administrative Law Judge Arthur I. Steinberg terminated the hearing proceeding because Perry failed to file the requisite notice of appearance, which was due to be filed on or before April 28, 1998. In so doing, the Presiding Judge observed that Perry had mailed a document entitled "Certified Demand for FCC Jurisdiction," dated April 13, 1998, to the Chief, Compliance and Information Bureau ("CIB"). The Presiding Judge found that the Certified Demand did not constitute the written notice of appearance required by Section 1.91(c) of the Commission's Rules, 47 C.F.R. § 1.91(c), because the document

was not addressed to the Commission or the Presiding Judge, and was not formally or officially filed. Second, and more significantly, the Certified Demand neither states nor implies that Mr. Perry "will appear at the hearing and present evidence on the matters specified in the [*Show Cause Order*]. On the contrary, the certified demand clearly implies that Mr. Perry does not intend to appear at a hearing unless he is first persuaded that the Commission has jurisdiction over him."

Order, at n. 1. The Presiding Judge also noted that Perry failed to appear and participate in a prehearing conference held in this proceeding on May 20, 1998. Pursuant to Section 1.92(c) of the Commission's Rules, the Presiding Judge certified the case to the Commission. 47 C.F.R. § 1.92(c).

3. On May 1, 1998, a registered mailing from Perry, containing an undated document entitled

"Respondent's Response and Challenge to the Jurisdiction of the Commission," was delivered to the Commission. In that document, Perry again challenged the Commission's authority and jurisdiction over him. In addition, Perry states that he "welcome[s] the opportunity to present [his] circumstances" before the Commission, including, but not limited to an expansion of the issues to encompass, among other things, the constitutionality of the FCC's policies and procedures, and criminal and civil violations by the FCC. He also "motions" for local and additional Federal Register publication of a public notice of the *Show Cause Order* in order to permit his listeners and programmers to represent their different and unique interests in broadcasting on his station. In addition, Perry "makes motion that venue for the hearings... be moved from Washington, D.C., and situated at the nearest federal facility located within the Austin, Texas geographic area."

4. Perry's May 1, 1998, submission was neither formally nor officially filed and was not before the Presiding Judge at the prehearing conference. Accordingly, the failure to consider that document was not error. Moreover, had it been considered, certification of this case to the Commission still would have been proper. In this regard, even a cursory review of that document reveals that it suffers from the same deficiencies as Perry's April 13, 1998, submission. Specifically, it neither states nor implies that Mr. Perry will appear at the hearing and present evidence on the matters specified in the [*Show Cause Order*] unless and until he is first persuaded that the Commission has jurisdiction over him. The Commission's jurisdiction over Perry is clearly set forth in the *Show Cause Order*, and no further explanation is necessary as a condition precedent to the filing of a notice of appearance relative to the scheduled hearing. Accordingly, we find that the fact that Perry's May 1, 1998, submission was not considered at the prehearing conference was not a material omission and is, at worst, harmless error.¹ Thus, it is not necessary to further address Perry's other untimely or defective requests contained within his May 1, 1998, submission.²

5. The Commission's records, as detailed in the *Show Cause Order*, indicate that Perry has operated an unauthorized radio station on 88.9 and 95.9 MHz in Leander, Texas, since at least February, 1997. Notwithstanding both written and oral warnings from agents of this Commission that his operations were illegal, Perry has continued to broadcast in violation of Section 301 of the Act. 47 U.S.C. § 301.

6. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 312(b) of the Act, 47 U.S.C. § 312(b), Keith Perry **IS ORDERED TO CEASE AND DESIST** from violating Section 301 of the Act. 47 U.S.C. § 301.

7. **IT IS FURTHER ORDERED** that, pursuant to Section 503(b), 47 U.S.C. § 503(b) of the Act, Keith Perry **FORFEIT** to the United States of America the sum of eleven thousand dollars (\$11,000) for

¹We also note that Perry attached to his submission a form letter, dated April 16, 1998, from the Commission, issued in response to an inquiry by him, that purports to disclaim federal jurisdiction over all intrastate radio communications. By a subsequent letter dated June 10, 1998, Perry was advised that his question was misunderstood and answered inaccurately. The June 10, 1998, letter informed Perry that Section 301 of the Communications Act of 1934, as amended, 47 U.S.C. § 301, clearly sets forth the Commission's jurisdiction over all radio transmissions, both interstate and intrastate. See also 47 U.S.C. § 152(b).

²On June 2, 1998, Perry submitted via registered mail to the Presiding Judge a document entitled "Respondent's Response to Compliance and Information Bureau's Request for Admission of Facts and Genuineness of Documents." That document not only purports to respond to CIB's request for Admission of Facts and Genuineness of Documents, but also reasserts Perry's challenges to the Commission's jurisdiction in this matter. In light of the Presiding Judge's determination and our holding today we dismiss that document as moot.

willful violation of Section 301 of the Act.³ 47 U.S.C. § 301. Payment of the forfeiture shall be made, in U.S. dollars, by check, credit card or money order payable to the Federal Communications Commission.⁴ The remittance should be marked "NAL Acct. No. 915HF0002" mailed to the following address

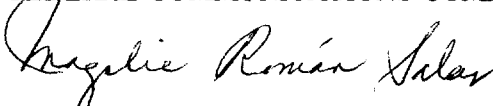
Federal Communications Commission
Post Office Box 73482
Chicago, IL 60673-7482

8. IT IS FURTHER ORDERED that the Office of Public Affairs, Reference Operations Division of the Commission send a copy of this Cease and Desist Order and Forfeiture Order by Certified Mail - Return Receipt Requested to:

Keith Perry
607 Osage Drive
Leander, Texas 78641

9. IT IS FURTHER ORDERED that this proceeding **IS TERMINATED**.

FEDERAL COMMUNICATIONS COMMISSION


Magalie Roman Salas
Secretary

³The forfeiture amount was calculated by using the base amount \$10,000 for the violation at issue (construction and/or operation without an instrument of authorization for the service) which becomes \$11,000 with the inflation adjustment. See 47 U.S.C. § 503(b)(2)(C). See also 47 C.F.R. § 1.80(b)(4)(5). Claims of inability to pay should be supported by tax returns or other financial statements prepared under generally accepted accounting principles for the most recent three year period. This information must be submitted within 30 days of the release of this Order to: FCC, Compliance and Information Bureau, Compliance Division, 1919 M Street, N.W., Washington, D.C. 20554, attention: 915HF0002-MLC.

⁴Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules, 47 C.F.R. § 1.1914. Please contact Chief, Billings and Collections for information regarding credit card payments.